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SUMMARY OF SUGGESTIONS

FOR

CONSTRUCTIVE ACTION AS TO LABOR RELATIONS IN THE COAL INDUSTRY

Submitted by the Bituminous Operators' Special Committee to the United States Coal Commission, June 26, 1923.

The Evening Post Job Printing Office, Inc., 154 Fulton St., New York, N. Y.

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SUMMARY OF SUGGESTIONS FOR CONSTRUCTIVE ACTION AS TO LABOR RELATIONS IN THE COAL INDUSTRY.

I.

Scope of this Summary.

We here summarize our suggestions for constructive action as to labor relations in the coal industry.

The guiding principle of these suggestions:

Freedom of evolution protected by Enforcement of Law.

Broadly speaking contractual relationships between operator and mine worker in the coal industry fall into two classes. (1) Operators who contract with the United Mine Workers of America; (2) Operators who do not so contract.

(1) Among the operators who contract with the United Mine Workers of America the contractual relationship assumes the form of joint dealing by the United Mine Workers of America acting under a common direction on the one hand and groups of operators and individual operators on the other hand.

(2) Among the operators, who do not contract with the United Mine Workers of America, there are two principal forms of contractual relationship;

(*a*) the individual employer dealing with the individual employee—non-union;

(*b*) collective dealing between the individual operator and an organization of his own employees.

These forms of relationship are so firmly established in different fields throughout the country that it is idle to expect that the supporters of any one of these forms will voluntarily abandon it at this time. Any solution of the difficulties arising from the coal problem which proposes to wipe out at this time either of these forms of relationship is a suggestion making for immediate bitter industrial war rather than peace.

Our general proposition is that it must be left to time and to evolution to demonstrate which of these existing forms of contractual relationship between labor and capital in the coal industry will ultimately serve society the best and demonstrate its superiority in free competition with competing forms. We do not ask for the adoption or the abolition of either form.

In any examination of the present situation it is important to have in mind the tests of what is desirable in labor relations and an understanding of the arguments of supporters and opponents of the various systems of contractual relationships when judged by these tests, but we shall not go over that ground here. A consideration of those tests and of those arguments but emphasizes that there is a sincere and honest difference of opinion which must be recognized and taken account of. The one thing which is essential is that it be recognized that a period

of evolution is necessary and must be protected by the principles of freedom from interference which are guaranteed by our American Constitution and traditions.

This is simply the application of the time-honored American principle of Tolerance towards differing beliefs, which has been the solution of so many problems, civil and religious, to this field of industrial controversy. *But, as always, it must be Tolerance conducted under and protected by the rule of law.* A period during which under the guise of tolerance, the field would be left open to the distorting influence of violence, illegality and infringement of rights would not be a period of evolution but of retrogression.

As we have pointed out to this Commission, rules exist in the Constitution guaranteeing to employer and employee the right to enter into such contractual labor relations as they may agree on, and these rules, if enforced and protected, will guarantee such a fair field for evolution. Such rules must be recognized and kept inviolate if there is to be peace and such opportunity for evolution.

It is our respectful belief that the United States Coal Commission can render to this industry no service more important than that of impressing on the public and upon the supporters of the various systems of relationship in the industry above described the importance of accepting this necessary period for the evolution and for the demonstration under these fair principles of our constitution and laws of the superiority of the respective forms of labor relationship which they support. If by the maintenance of these constitutional rights of freedom of contract a fair field is maintained, the supporters of each system ought

to have enough confidence in it to leave the outcome to the experience and judgment of the future.

The Function of Public Opinion as a Remedial Force and the Opportunity of the Commission to Guide such Opinion.

A very important part of future constructive remedial action as to labor relations in the Coal Industry depends upon bringing to bear upon these relations the force of public opinion. By public opinion we do not mean merely the opinion of the public generally, but also the creation within the industry among the employers and also among the employees of an enlightened opinion which will effectively deal with their respective functions and duties. In this Summary we merely reiterate our belief that in a large if not predominant measure the solution of this problem will depend upon the development of an opinion on the part of the public and also on the part of both employers and employees alike along lines

(1) which will insure the enforcement of the law;

(2) which will recognize the interest of the public in continuity and quality of service;

(3) which will not tolerate monopoly wherever found;

(4) which will develop between owner and worker a higher regard for both the letter and spirit of contractual obligations;

(5) which will lead to a keener appreciation of the necessity of efficiency of production;

(6) which will develop progressively improved living conditions;

(7) which will impress on employer and worker alike the vital necessity of co-operation for safety;

(8) which will set its face against the taking advantage of acute temporary shortage or over-supply of labor to artificially raise or depress wages; and finally

(9) which will develop the recognition by operators and mine workers alike that they have fundamental interests which are coincident and not divergent, which will emphasize the points of common interest and minimize the points of difference.

We believe that public opinion in this country is on the eve of a great development in regard to labor relations. We believe that America is as weary of a status of war in industrial matters as in international affairs and is seeking for a more permanent and rational relation between labor and capital and a less wasteful method of settling controversies, than is afforded by the present quasi armed status, and the formal quasi diplomatic relations. We believe that honor and business success alike await those engaged in this industry, employers and employees alike, as in other industries, who make real the theory that labor and capital are partners instead of adversaries, and who by a full recognition of this fact transform apathetic or distrustful laborers into keen and interested co-workers.

We think that a powerful impetus can be given to public opinion in the foregoing directions by the findings of this Commission as to the wastefulness of present labor relations, and we earnestly hope that its recommen-

dations and report may guide the development by pointing out the lines it should take.

Vital, however, as we deem the development of such public opinion, in this Summary we shall concern ourselves merely with setting out in brief compass the suggestions for concrete action which might be recommended by the Commission for competent executive or legislative action or the action of those directly interested.

Present Suggestions Confined to Labor Relations.

We do not here deal with the constructive suggestions which we expect to offer as to transportation and other problems, which, through their tendency toward making employment more regular, we believe would have an indirectly helpful effect on labor relations in the Coal Industry.

II.

Protection of the Public against Monopoly by Enforcement of Existing Statutes.

Last Summer the public was brought face to face with a five-month's suspension of production of coal in the union fields. As President Harding stated to Congress, this put the country at the mercy of the United Mine Workers of America, except in so far as coal was mined in the unorganized fields. Any attempts to produce coal, even by steam shovel from open pits, or by the use of existing slack piles, were met by acts of intimida-

tion and violence by the United Mine Workers, and every effort was made to make the suspension nation-wide by extending the strike into the non-union fields. This action paralyzed interstate commerce in coal from these fields for over five months, threatened industry with a disastrous shortage, and produced the inevitable consequence of an overloading of transportation at the end of the strike and resulting abnormally high prices.

Must the public submit to such a situation whenever the United Mine Workers of America are dissatisfied with the results of reason and persuasion and turn to the use of what they call their "economic power"? The investigation which we have made into the events of that Summer of 1922, the results of which we have submitted to this Commission in our successive briefs, make the answer to this question clear. Such action constituted a flagrant violation of the Sherman Anti-Trust Law. We shall not here summarize the legal argument on that point. It is enough to note that this principle of law was finally resorted to last Autumn by the Government in a similar situation in the Railway Shopmen's Strike.

So long as the methods used last Summer by the United Mine Workers represent a deliberate, thoroughly matured policy of that organization, which they propose to use on all occasions when necessary to enforce their will, there will be presented the clear-cut issue between a great national policy against monopoly represented by the Sherman Law on the one hand and the policy of this great labor organization on the other.

The two cannot exist together in this nation. The law should be invoked deliberately, firmly and persist-

ently until the monopolistic efforts of the United Mine Workers of America are abandoned. It should be made unmistakably clear that it is the national policy that the drastic remedies of the Sherman Law will be invoked to prevent any nation-wide stoppage in the coal industry by any combination.

Furthermore, it is to be remembered that the use of the Sherman Law is not confined to the Government itself. Remedies may be invoked by private citizens who suffer from its violation. Should another nation-wide strike be threatened under similar circumstances, it is not necessary to await action by the Department of Justice. The consuming public or the operators whose business will suffer by the conspiracy may invoke the law to prevent injury; even after injury has been done, they are entitled to damages for its occurrence.

A realization of the existence of these remedies and a readiness to use them, cultivated by the coal industry and the consumers of coal throughout the country, will go a long way in the future to prevent the abuses of the past.

III.

Besides enforcing the present laws against monopoly, there should be imposed by law additional conditions and regulations upon all combinations either of labor or capital contracting as to labor relations.

These regulations are suggested for the purpose of securing greater financial responsibility and greater democracy of organization on the part of such combinations.

In our opinion no such organization should hereafter be permitted to exist in the coal or any other basic industry unless it conforms to these conditions.

Existing law is sufficient, we believe, to curb monopoly and so prevent such nation-wide stoppages as have occurred in the coal industry. There is much need, however, of legislation to regulate the activities of such organizations before they reach the stage of attempted monopoly. While labor organizations in many other industries have shown a most wholesome sense of responsibility and have been conducted on democratic lines, this unfortunately has not been true in the coal industry.

Suggestions for Obtaining Greater Financial Responsibility and Democracy of Organization.

We have in the present status of the United Mine Workers an organization wielding great power, controlling enormous sums of money, and yet not being held to the ordinary responsibility to which such organizations in other spheres of business are held. It violates its contracts with such frequency and impunity that their

force is practically non-existent. Its funds are collected for it by an enforced system of taxation. Its officers do not have the burden which is laid upon the officers of other associations of raising the money necessary for their needs. There is no public accounting of its funds, and, until the recent *Coronado* case, there was not even any certainty that judgments against it could be collected. Even the *Coronado* case is limited in its effect to the federal courts and there is no certainty today that a judgment obtained in the state courts could be collected.

Legislation, both state and federal, should be enacted to remedy these deficiencies. The simplest and most effective line which such legislation might take seems to us to be the line of providing for incorporation of all such organizations of either groups of operators or groups of workers employed by more than one operator entering into contracts as to wages and working conditions. The condition alike of power and freedom is responsibility. A federal statute already exists permitting the incorporation of labor unions (Statutes 1886, ch. 567). It should be amended to require the incorporation of organizations of employers and workers entering into wage contracts that affect interstate commerce. Similar State statutes could deal with such organizations as did not fall within Federal jurisdiction. As a condition of such incorporation or any alternative form of association which might be required, the following restrictions should be imposed:

Incorporation should carry the Following Restrictions.

a. Corporate elections and strike votes should be protected against intimidation by a secret ballot taken and counted under conditions which will

insure a representative vote and no disclosure of names.

b. Corporate meetings should be made representative by requiring proper notice and a substantial quorum upon important business.

Under present methods it is well known that the official control of the union locals of the United Mine Workers customarily falls into the hands of an irresponsible and radical minority who attend the meetings to the exclusion of the conservative, stay-at-home men of families.

c. Strict provision should be made for public accounting and auditing of the funds of such organizations, with the customary legal provisions for state visitation of corporations.

d. Enforced taxation for dues and assessments such as the check-off should be forbidden by law.

e. Penalties for breach of contract should be made automatic so far as possible and enforcement should not be left to the other party to the contract alone. It has been sufficiently demonstrated that a single operator often does not dare enforce the penalties for even a clear contract violation.

In the case of violations of contract affecting the public interest, such as a strike or lockout in violation of contract or of statute, a co-ordinate remedy at least should be given to the public authorities either by way of injunction or collection of penalties.

In order to meet cases where the public authorities might be remiss a similar alternative right of action should lie in the hands of a taxpayer or private citizen.

In case the organization is subdivided into higher and lower groups the remedy should always include a right of action against the higher group, which ordinarily holds the funds and is financially responsible and which largely controls the action of the lower group and possesses power quite sufficient to impose restraint upon it, and proper service of process upon the lower group should be made to be legal service upon the higher group.

f. Such organizations when they enter into contracts should be required to maintain certain deposits of funds available for forfeitures in the hands of a responsible depositary sufficiently large to cover the minor infractions of contract now so frequent and disturbing.

g. Finally provision should be made for forfeiture of the charter of the organization for a grave offense such as a concerted lockout or strike in violation of contract or statute.

All the foregoing suggestions are intended to be general. No organization either of labor or of capital created to deal with labor relations, should be permitted to exist if it does not conform to the general principles of democracy and responsibility which such legislation would impose.

IV.

In order to bring the power of public opinion intelligently and effectively to bear upon industrial controversies, laws should be enacted in the various States creating impartial statutory industrial commissions with the power to investigate facts and to make recommendations as to disputes in industry.

Our investigation has brought out the immense danger of misrepresentations of fact in confusing the issues of any controversy between capital and labor in the coal industry. On the one hand the power of an unscrupulous labor leader to mislead his followers is great. It is not always easy to ascertain the facts of an issue or controversy or situation and to make them clear to the workmen interested without a special or public investigation.

On the other hand there have no doubt been cases where some operators have not been free from blame.

In all these classes of cases the findings and recommendations of an impartial public board would be most salutary and helpful. We shall present to the Commission a special study which we are making of the workings of the Industrial Board in the State of Colorado. Such a board has no power to compel obedience to its findings save in the development of an intelligent public opinion.

But when it undertakes an investigation of a controversy both parties to that controversy are required by law to withhold action either by strike or lockout until the board has been given a reasonable time to complete its investigations and report publicly its conclusions. In

the case of the Colorado Board it has been shown again and again that strikes and other difficulties may be prevented by the public character of the investigation and the light which it sheds upon the controversy. Similar results have followed in the history of the Canadian Conciliation Act, upon which the Colorado statute was based.

It is of course not claimed that such a remedy is infallible; even public opinion does not prevent all abuses; but as a means for accomplishing just results in this difficult sphere of human relations this form of board has already won the marked approval of those familiar with its workings.

V.

Certain other legislative changes should be made to protect the interests of the public and the operators and miners in labor relations.

1. On the one hand it has been made abundantly clear that the statutes creating state licensing systems for miners have been so administered in certain states as to establish and confirm a labor monopoly in the hands of the dominant labor organiaztion of the state. In those states the practical effect of those systems is to keep non-union laborers out of employment in time of strike by being refused licenses. This simply means that as administered these statutes are being used to nullify one of the most fundamental rights of the individual as guaranteed by our constitution. These statutes should be either repealed or so modified as to make such a result impossible.

2. On the other hand, in the past there have been accusations made against certain operators that they were guilty of short-weighing the coal upon which they paid their miners. There are already existing in most states provisions to prevent such a fraud and in general there is so little criticism of the company weights that in many cases where provisions for check weighmen are offered by the law the miners prefer to trust the company weights than to pay the extra expense of the checking. Nevertheless, in order to prevent the possibility of a criticism which may undermine that relation of confidence which we believe to be essential between employer and employee, laws should be enacted generally providing for the checking of the company weights if desired by the employees and for such other remedies as may be necessary to protect the employee.

VI.

Adjustments should be made in the contracts between the United Mine Workers of America and the operators in the unionized fields to meet the requirements of the public interest.

In the fields where operators and workers contract individually, the form of contract is in accord with the rights of the parties guaranteed under the Constitution. The willingness of operators and workers to deal on this basis has in the past often operated directly in the public interest. It has recently stood between the public and the coercion of monopoly. As President Harding told

Congress last summer but for the coal mined by these fields the United Mine workers had the country at their mercy.

The same is true of the forms of contract under which a Company deals collectively with its own employees. Such contracts square with the law, and the fact that operators and workers under them mined coal in the time of the Nation's need has worked directly in the public interest.

There have, however, developed in the present system of contracting between the United Mine Workers and the operators dealing with them certain grave situations which we believe are against the interest of the public, workers and operators alike. This system has lent itself to unlawful monopolistic efforts and the financing of intimidation and violence. It has lent itself to violent stoppages of the coal industry with grave danger and hardship to the public, operators and workers alike. It is out of line with the spirit and methods of the most enlightened and successful of labor organizations. It should in the interest of all, if it is to continue, be brought into harmony with the requirements of the Public Interest.

The following suggestions are limited exclusively to the unionized fields where this system of contracts exists between the United Mine Workers of America and various operators or groups of operators. The fact that such suggestions are made is not to be taken as an admission or indication on our part or on the part of any of our clients that we approve of that form of relationship between employer and employee or that we approve of the present organization of the United Mine Workers or its methods.

But, as we pointed out at the opening of this summary, there are now in existence many organized fields where such contracts between the United Mine Workers of America and various groups of operators and individual operators are in force. The miners in these districts probably desire to continue this system of dealing. It is obvious that even if it were desirable to end this system it could only be done at the expense of an industrial struggle which would convulse the industry. Under these circumstances and pending the period of evolution mentioned by us at the outset, during which the best form of labor relationship may have an opportunity to demonstrate its superiority, it is important to make adjustments in existing contracts which will reconcile the existing method of joint collective dealing in the union fields with the law of the land and with the interests of the public. These suggestions are offered solely with that end in view. They are intended to reach the three principal evils, now inherent in the present form of contract.

a. *The Recurring Crises Precipitated by the Present Form of Fixed Term Contract should be Avoided.*

The fundamental objection to the present system is the recurring crises caused by the end of a fixed term agreement which subject the industries of the country to uncertainty and which have resulted in nation-wide stoppages through the inability of the workers and employers to agree on the provisions of new contracts of employment.

These evils have been accentuated by the insistence of the United Mine Workers upon nation-

wide negotiations and settlements and by their refusal to permit contracts to be closed for any individual district, even where both sides were ready to agree, until the wishes of the organization had been complied with in all districts. The evil effect upon the business of the entire country necessarily arising out of such recurring crises is too manifest for argument.

b. *The Policy of Arbitrating Disputes must Succeed the Policy of Monopolistic Coercion.*

As we have pointed out, the present policy of enforcing the views of this labor organization by suppressing interstate commerce in coal with a nation-wide strike is contrary to the law of the land. It is also entirely out of line with the progressive policy of the labor unions existing in many other industries. It is more and more being recognized by the far-sighted leaders of those organizations that any strike is a weapon of coercion and violence, and that particularly when used to exert the pressure of hardship and suffering upon the public to secure the acceptance of its demands it is a process of bludgeoning which should not be used. On the other hand, it is increasingly recognized by employers in all industries that the weapon of the lockout to secure the acceptance of the employer's proposals by his employees is also a resort to a bludgeon rather than to the methods of reason.

Now if these methods of war are to be abandoned for methods of peace, some way for the

adjustment of conflicting demands must be found. The way of such adjustment which has been universally adopted by human beings in all other relations of life when they abandon a state of war for a state of peace has been the method of submitting their controversies to an impartial judge or arbiter for decision, and that is the method which by the voluntary action of employers and progressive labor organizations is being brought more and more into use for settling disputes in the fields of industry.

The very existence of a final authority or adjuster makes more probable the meeting of the minds of the parties when it is realized that neither of them has anything in the long run to gain by holding out for untenable positions. We therefore suggest that every effort should be made to introduce this element into the system of joint collective bargaining in the unionized fields. Under such a system there will be an opportunity for working out without stoppage of the industry the matters as to which there is a conflict of opinion between operators and mine workers.

c. *Provisions Looking to the Greater Financial Responsibility of the Contracting Parties should be Introduced.*

It is in the unionized fields occupied by the United Mine Workers of America that the evils of financial irresponsibility have been most manifest. It is there where the outlaw strike has flourished and where the broken contract is so

common. It is in those fields that the terrific power of the check-off has been imposed by the International Mine Workers' Organization upon miner and operator alike and where the temptations to irresponsible organization politics afforded by so much easy money have been witnessed.

In future provisions should be inserted in the contracts which will strike at the roots of these evils. To meet such objections to the present contracts of the United Mine Workers and to secure continuity of production we suggest that the United States Coal Commission recommend that no contracts be entered into in the unionized fields unless they conform to some such provisions as the following:

(1) Each contract shall run until terminated by either party on two years' notice.

(2) Each contract shall contain a provision to the effect that either party may propose a change in wages, working conditions or any other of its terms on thirty days' notice, specifying the proposed change; that on or prior to the expiration of the thirty days the parties will proceed to negotiate as to the proposed change; that if at the end of thirty days after commencement of negotiations they are unable to agree, the question whether the proposed change shall be made will be submitted to a permanent impartial adjuster for decision. Furthermore any question as to the interpretation or performance of the contract itself shall be submitted to such adjuster. Such permanent adjuster will be appointed at the time of the execution of the contract by agreement of the parties, or on their failure to agree by the Chief Judge of the state in which the district in question is situated. Such adjusters shall serve for five years, shall receive appropriate compensation and shall be required to make a decision on any point in controversy submitted to them within sixty days after such submission.

(3) Each contract shall further provide that the decision of the adjuster will be accepted by both parties to the contract and that no concerted action will be taken by either by way of strike or lockout either pending or after such decision.

(4) In order to avoid disputes over wage rates arising merely out of changes in general price levels, each contract shall provide that, in addition to proposals for changes in wages that may be made under (2) the wage scale be periodically revised at the request of either party by mutual agreement where possible, and, if not, by decision of the permanent impartial adjuster, to conform to changes in the general level of prices, as evidenced by a standard index of commodity prices, during the period elapsing since the last date on which a scale of wages was fixed either by mutual agreement or the decision of the permanent impartial adjuster.

(5) Each contract shall provide that the adjuster shall be guided in his decision on matters submitted

to him, so far as practicable, by some such code of principles as the following:

(*a*) *Wages.* In passing on any disagreement as to wages the impartial adjuster shall bear in mind the interests of the public as well as of the operators and miners. He shall bear in mind the desirability not only of maintaining existing standards of living among workers, but the progressive improvement of the same made possible through increased efficiency of production both in coal and industry generally. But he shall also consider the competitive conditions of operators and the probable unfairness to other workers and industries of a rate of pay artificially and substantially higher than that for similar labor in other industries.

(*b*) *Hours of Labor.* In passing on questions of hours of labor the adjuster shall recognize the desirability of workers having time for other pursuits and interests than their labor in the mines, but shall also bear in mind the importance to the laborer himself as well as the operator of maximum production as the ultimate source of wages.

(*c*) *Working Conditions.* In passing on differences arising out of working conditions the adjuster shall have in mind that it is important to provide for efficiency in management and efficiency in the performance of the individual worker; that it is equally important to insure conditions under which there will not be a sense of distrust

or grievance on the part of the workers and will be effective protection against individual oppression.

Further, that it is in the interest of the public and the ultimate interest of both operator and laborer that labor-saving devices be installed and that the terms and conditions under which they be installed be such as to permit them to be profitably used.

(*d*) In passing generally upon matters of controversy between employers and employed the adjuster should bear in mind the desirability of making decisions which will recognize and tend to develop the spirit of co-operation and partnership in a common enterprise and which will make the mine operation one which will be more beneficial to operators and employees alike.

(6) Where questions of wages or working conditions arising in different districts are pending before more than one adjuster, such adjusters should consult together and make such mutual exchange of information and views as will tend toward a sound decision by each.

(7) No such contract shall contain any covenant on the part of the operator to collect from any of his employees and turn over to the United Mine Workers' organization any dues or assessments or other collections whatsoever.

(8) Each such contract shall provide that penalties for violation of contract by the United Mine

Workers shall be payable either by the employees directly concerned in such violation or by the district organization of the United Mine Workers at the election of the other party to the contract. It shall also provide that each party to the contract will deposit, subject to the order of the impartial adjuster, a fund in an amount fixed by him out of which such adjuster may order penalties accruing to the opposite party to be paid.

If changes substantially as above suggested should be made in the form of contract now employed in the unionized districts, we believe that the changes would be greatly in the public interest. We think they would go far towards eliminating the present system of monopolistic coercion which now overhangs both the negotiation for and the performance of those contracts; and which now holds over the head of the public the constant threat of the disaster of a nation-wide strike.

Finally we think we have suggested no change in these coal contracts which has not already been fully approved by the established policy of enlightened labor organizations in other fields of industry.

Respectfully submitted,

HENRY L. STIMSON,
GOLDTHWAITE H. DORR,
Of counsel for Bituminous Operators' Special Committee.

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